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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
CHORBAJI, MONZER R	
ART UNIT	**PAPER NUMBER**
1744	

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/997,694	COWLEY ET AL.	
	Examiner	Art Unit	
	MONZER R. CHORBAJI	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 February 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-70* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-70* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 November 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *02/16/2006*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This final action is in response to the communication received on 02/23/2006

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-11, 14-37, 39-49 and 52-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenblatt et al (U.S.P.N. 4,681,739) in view of Weaver-Meyers (Controlling Mold on Library Materials With Chlorine Dioxide: An Eight-Year Case Study-IDS).

With respect to claims 1 and 39, the Rosenblatt reference discloses a method for fumigating an enclosed volume (col.4, lines 26-27) that contains contents including Bacillus spores (example 1) requiring fumigation (col.3, lines 22-23). The Rosenblatt reference teaches the following: climatizing the enclosed volume (col.4, lines 13-16), generating chlorine dioxide gas from a source which represent a generator (col.6, lines 1-3), introducing the chlorine dioxide gas into the enclosed volume to be fumigated such that an emitter is required to let the gas in the enclosed volume (col.6, lines 12-14), distributing the chlorine dioxide gas in the enclosed volume (col.4, lines 23-25), maintaining a residual amount of chlorine dioxide gas into the enclosed volume at a level (col.4, lines 20-23) and duration (col.4, lines 23-25) to penetrate the contents as required for the decontamination of Bacillus spores (example 1) and removing the chlorine dioxide gas from the enclosed volume (col.6, lines 21-24) by repeatedly drawing a vacuum and flushing with air (col.8, lines 1-5) since chlorine dioxide is corrosive (col.5, lines 22-25). The Rosenblatt reference fails to teach fumigating a previously habitable enclosed volume and restoring habitability to the volume. The Weaver-Meyers reference teaches fumigating previously habitable enclosed volume with chlorine dioxide gas (page 457, left column, lines 10-25 and right column, lines 4-10). Thus, it would have been obvious to one having ordinary skill in the art at the time

the invention was made to modify the method of the Rosenblatt reference by fumigating habitable enclosed volumes since chlorine dioxide has a strong sporicidal activity as taught by the Weaver-Meyers (page 458, left column, lines 26-30) and by restoring habitability to such enclosed volumes as taught by the Rosenblatt reference due to the corrosive nature of chlorine dioxide (col.5, lines 22-25).

With respect to claims 2, 18, 40 and 53, the Rosenblatt reference teaches removing chlorine dioxide gas from the enclosed volume (col.6, lines 21-23) and then flushes the emitter and the enclosed volume with filtered inert gas (col.6, lines 21-24). Since the Rosenblatt reference teaches that in one embodiment one stream is used to introduce and exhaust the sterilant (col.4, lines 47-50), then when purging occurs, the filtered inert gas will also include the chlorine dioxide generator. In addition, scrubbing of chlorine dioxide gas is disclosed in the Rosenblatt reference (col.6, lines 24-27). Further, the Rosenblatt reference produces chlorine dioxide gas (stripper) from a liquid solution (col.6, lines 1-11) and introduces chlorine dioxide into the enclosed volume using in one embodiment only one stream (col.4, lines 47-50).

With respect to claims 3-4 and 41-42, the Rosenblatt reference generates chlorine dioxide gas from an aqueous solution of chlorine dioxide gas in a liquid (col.6, lines 1-7).

With respect to claims 5 and 43, since the Rosenblatt reference teaches that in one embodiment only one stream is used (col.4, lines 47-50), then the stream (emitter) introduces chlorine dioxide into the enclosed volume and scrubs chlorine dioxide after the end of a sterilization cycle. Thus, the emitter is a stripper (col.6, lines 21-27).

With respect to claims 6 and 44, the Rosenblatt reference teaches the use of a single means for introducing and for scrubbing chlorine dioxide gas (col.4, lines 47-50 and col.6, lines 21-27), but fails to teach placing such single means within a previously habitable enclosed volume. The Weaver-Meyers reference teaches fumigating previously habitable enclosed volume with chlorine dioxide gas (page 457, left column, lines 10-25 and right column, lines 4-10). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Rosenblatt reference by placing a single means for introducing and for scrubbing chlorine dioxide gas within a previously habitable enclosed volume since chlorine dioxide has a strong sporicidal activity as taught by the Weaver-Meyers (page 458, left column, lines 26-30).

With respect to claims 7-10, 14, 24, 45-48, 52 and 57, the Rosenblatt reference teaches the following: adjusting both the relative humidity and the temperature (col.3, lines 59-61 and col.4, lines 13-15), intrinsically avoids condensation by monitoring and controlling the dew point within the enclosed volume (col.4, lines 56-61) and reducing the level of illumination (col.5, lines 19-21).

With respect to claims 11 and 49, the Rosenblatt reference fails to teach fumigating a building or an enclosed portion thereof; however, the Weaver-Meyers reference teaches fumigating the deck area, which is an enclosed portion of the library building with chlorine dioxide gas (page 457, left column, lines 10-25 and right column, lines 4-10). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Rosenblatt reference by

fumigating portions of a building with chlorine dioxide as taught by the Weaver-Meyers reference since chlorine dioxide has a strong sporicidal activity (page 458, left column, lines 26-30).

With respect to claims 15-17, 19-20, 59 and 61-63, the Rosenblatt reference teaches that the concentration of chlorine dioxide varies and depends on several factors that includes the type of spore or bacteria considered, exposure times (col.4, lines 43-46) and humidity conditions (col.3, lines 37-43). Also, a sample of a wide concentration range is disclosed in col.3, lines 30-36. Thus, one having ordinary skill in the art at the time the invention was made considering the Rosenblatt teachings would realize that the concentration of chlorine dioxide is not limited to a certain range but depending on, for example, the kind of spore present, the concentration is subject to numerous modifications.

With respect to claims 25, 27, 58 and 60, the Rosenblatt reference teaches a temperature of 77 degrees Fahrenheit (col.4, lines 14-16) with a relative humidity above 60% (col.4, lines 59-61) and an exposure time of 10 hours (col.4, lines 44-46).

With respect to claims 26 and 28-30, the Rosenblatt reference teaches that the concentration of chlorine dioxide varies and depends on several factors that includes the type of spore or bacteria considered, exposure time and humidity conditions (col.3, lines 37-43). In addition, a sample of a wide concentration range is disclosed in col.3, lines 30-36. Furthermore, the Rosenblatt reference teaches sterilizing porous organic surfaces without causing appreciable residue deposition and repeatedly flushing items in the chamber with filtered air to remove and maintain a certain amount of acceptable

residual chlorine dioxide (col.8, lines 1-5). From the above teachings, it is inferred that some acceptable residual chlorine dioxide on the sterilized items will be present such that one having ordinary skill in the art at the time the invention was made considering the Rosenblatt teachings would realize that depending on the type of material makeup of items to be sterilized and the acceptable amount of residual chlorine dioxide on the items to be maintained, modification of the residual amount of chlorine dioxide is a matter of routine experimentation.

With respect to claims 34 and 66, the Rosenblatt reference teaches either removing residual chlorine dioxide once (col.6, lines 21-24) or removing residual chlorine dioxide multiple times (col.8, lines 1-5). In addition, the Rosenblatt reference teaches a temperature of 77 degrees Fahrenheit (col.4, lines 14-16) with a relative humidity above 60% (col.4, lines 59-61). Clearly, evacuating and flushing with filtered air intrinsically result in lowering the relative humidity in the chamber such that depending on the acceptable amount of residual chlorine dioxide, relative humidity in the chamber depends on the number of times chlorine dioxide gas is removed from the chamber after the sterilization cycle and modifying the relative humidity is a matter of routine experimentation.

With respect to claims 35 and 67, the Rosenblatt reference either removing residual chlorine dioxide once (col.6, lines 21-24) or removing residual chlorine dioxide multiple times (col.8, lines 1-5) without explicitly disclosing time interval values. This removal step intrinsically occurs over a period of time interval such that depending on the acceptable amount of residual chlorine dioxide present on the sterilized items and

the number of removal cycles, modifying the time interval for chlorine dioxide removal is a matter of routine experimentation.

With respect to claims 21-23, 31-33, 54-56 and 64-65, the Rosenblatt reference teaches the following: the enclosed volume undergoes a vacuum (col.4, lines 34-35), the chlorine dioxide solution inherently has an equilibrium partial pressure (col.6, lines 1-7), the sterilant gas penetrates the contents in the enclosed volume (abstract, lines 1-10) and the enclosed volume requiring fumigation is contaminated with any type of spore (abstract, lines 11-13) including Bacillus Anthracic. Furthermore, the Rosenblatt reference discloses various gram-positive spores, Bacillus Subtilis (col.6, lines 48-51).

With respect to claims 36-37 and 68-69, the Rosenblatt reference teaches that in one embodiment only one stream is used (col.4, lines 47-50) to introduce the sterilant into the enclosed volume and to scrub the sterilant from the enclosed volume (col.6, lines 12-24). In addition, the Rosenblatt reference removes the sterilant by a detoxification treatment (col.6, lines 24-27).

5. Claims 12 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenblatt et al (U.S.P.N. 4,681,739) in view of Weaver-Meyers (Controlling Mold on Library Materials With Chlorine Dioxide: An Eight-Year Case Study-IDS) as applied to claims 1 and 39 and further in view of Smith et al (U.S.P.N. 4,780,333).

With respect to claims 12 and 50, both the Rosenblatt reference and the Weaver-Meyers reference fail to provide a vehicle as an example for the enclosed volume; however, the Smith reference teaches treating a vehicle (col.6, lines 32-36). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention

was made to modify the Rosenblatt reference and the Weaver-Meyers reference methods to include treating a vehicle since there is an established relationship between respiratory ailment symptom and automobile air conditioning (col.1, lines 52-54).

6. Claims 13 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenblatt et al (U.S.P.N. 4,681,739) in view of Weaver-Meyers (Controlling Mold on Library Materials With Chlorine Dioxide: An Eight-Year Case Study-IDS) as applied to claims 1 and 39 and further in view of Halaby, Jr. et al (U.S.P.N. 4,272,019).

With respect to claims 13 and 51, both the Rosenblatt reference and the Weaver-Meyers reference fail to teach distributing the sterilant by using heating ventilation and an air conditioning system; however, the Halaby reference teaches distributing deodorants and insecticides using an air conditioning system (col.11, lines 5-14 and lines 24-29). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Rosenblatt reference and the Weaver-Meyers reference methods to include using air conditioning systems in order to gain access to another area to be treated (col.11, lines 26-29).

7. Claims 38 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenblatt et al (U.S.P.N. 4,681,739) in view of Weaver-Meyers (Controlling Mold on Library Materials With Chlorine Dioxide: An Eight-Year Case Study-IDS) as applied to claims 37 and 69 and further in view of Spink (U.S.P.N. 5,565,180).

With respect to claims 38 and 70, both the Rosenblatt reference and the Weaver-Meyers reference fail to teach removing the sterilant using an aqueous mixture of a bisulfite and caustic; however, the Spink reference teaches that the use of an aqueous

mixture of a bisulfite and caustic (col.20, lines 11-16) is known for treating gases including chlorine dioxide (col.14, lines 40-44 and col.19, lines 28-32). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute one known detoxification process as disclosed in the Rosenblatt reference for another (the Spink reference, col.20, lines 11-16) since such an aqueous mixture removes chlorine dioxide gas from emissions (col.19, lines 30-32).

Response to Arguments

8. Applicant's arguments filed on 02/13/2006 have been fully considered but they are not persuasive.

On page 2 of the Remarks section, applicant argues that, "When described in greater detail, the size of the exposure chamber disclosed in the working examples is 2 liters and no guidance is provided to extend the disclosed method to habitable enclosed volumes." The examiner disagrees with applicant's conclusion and points to the weaver-Meyers reference where chlorine dioxide gas is used to fumigate "rooms" in a library as an example of the success of such a gas in combating spores. See page 458, left column, lines 26-30 in the Weaver-Meyers reference. Clearly, both the Rosenblatt reference and the Weaver-Meyers reference recognize inactivating bacterial spores with chlorine dioxide gas.

On page 3 of the Remarks section, applicant argues that, "Furthermore, the process discussed in Weaver-Meyers differs significantly from the claimed process." The Weaver-Meyers reference is combined for the feature of fumigating habitable enclosed volumes and not for the type of process fumigation, which is taught in the

Rosenblatt reference. The Rosenblatt reference teaches maintaining a residual amount of chlorine gas in the enclosed volume (col.4, line s 20-23). Therefore, the process of the Weaver-Meyers reference is irrelevant to the obviousness rejection at hand.

On page 5 of the Remarks section, applicant argues that, "Where, as in the present case, the teachings f the art would discourage persons skilled therein from doing what applicant teaches and claims, the art establishes the very antithesis of obviousness." The examiner disagrees with the applicant conclusion based on the prior art discussed on pages 3-5 of the Remarks section that disclose the opinions of some but not all artisans in the art of fumigating buildings. The discussed references would further motivate one having ordinary skill in the art to experiment more with chlorine gas in fumigating enclosures and not to just ultimately give up on such endeavor based on partial evidence. Clearly, one having ordinary skill in the art reading the Rosenblatt and the Weaver-Meyers references is guided to modify the method of the Rosenblatt reference to fumigating habitable enclosed volumes since chlorine dioxide has a strong sporicidal activity as taught by the Weaver-Meyers (page 458, left column, lines 26-30) and by restoring habitability to such enclosed volumes as taught by the Rosenblatt reference due to the corrosive nature of chlorine dioxide (col.5, lines 22-25).

On page 6 of the Remarks section, applicant argues that, " The Office makes the assumptions that the stream is an emitter and that the emitter is a stripper." The examiner disagrees since such a conclusion is based on a valid and necessary reasoning since the method of the Rosenblatt reference introduces and removes chlorine gas into the enclosed volume. See col.4, lines 47-50 and col.6, lines 21-27.

With respect to applicants' arguments on pages 7-8 of the Remarks section regarding the concentration range, temperature range, relative humidity range, the negative pressure range and the residual concentration range for chlorine gas, the disclosure does not provide any criticality to such values. As a matter of fact, throughout examples 1-2 in the specification it is inferred that the size of the volume to be treated controls the above parameters. Both the Rosenblatt reference and the disclosure recognize that the parameters for chlorine gas depend on the size of the volume, the type of the bacterial spores and on the degree of inactivation efficacy desired. Therefore, manipulating such variables is an obvious matter of routine experimentation.

On page 8 of the Remarks section, applicant argues that, "Concerning claims 23 and 56, Rosenblatt is especially concerned with non-porous substrates and not gas penetrable ones." The examiner realizes that the citation provided by the applicant is one application of the Rosenblatt reference; however, see column 5, lines 49-55 where in another embodiment, the chlorine gas penetrates certain surfaces.

On page 8 of the Remarks section, applicant argues that, "Rosenblatt fails to teach Bacillus anthracis, an especially difficult spore to kill as evidenced by the problems discussed above in cleaning up the Hart Senate Building and Brentwood Post Office facility from their exposure to anthrax." In evaluating the Rosenblatt reference, the reference does not exclude any type of spore, yet it teaches that chlorine gas is effective against all bacterial spores. The conventional knowledge at the time of the invention recognizes that anthrax (bacterial spore) under certain conditions can become airborne. Clearly, one having ordinary skill in the art at the time the invention was made

would have been motivated to decontaminate anthrax present in buildings based on applying the sterilizing method of the Rosenblatt reference to spore infested buildings as evidenced by the Weaver-Meyers reference since chlorine dioxide has a strong sporicidal activity (the Weaver-Meyers reference, page 458, left column, lines 26-30).

On page 9 of the Remarks section, applicant argues that, "First, Smith attempts to reduce the humidity level in the air conditioning duct when humidity levels approach 70%." The Smith reference is only applied to show that treating vehicles is known and not for manipulating humidity levels. The Smith reference teaches treating a vehicle (col.6, lines 32-36). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Rosenblatt reference and the Weaver-Meyers reference methods to include treating a vehicle since there is an established relationship between respiratory ailment symptom and automobile air conditioning (col.1, lines 52-54). This motivation statement based on the prior art is evidence and not a conclusory statement.

On page 10 of the Remarks section, applicant argues that, "No evidence from the prior art is presented as required by law, only a conclusory statement of what one of ordinary skill in the art would do." The Halaby reference provides a motivation for applying the concepts of the Rosenblatt reference and the Weaver-Meyers reference to HVAC systems such that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Rosenblatt reference and the Weaver-Meyers reference methods to include using air conditioning systems in order to gain access to another area to be treated (col.11, lines 26-29).

On page 10 of the Remarks section, applicant argues that, "No evidence from the prior art is presented as required by law, only a conclusory statement of what one of ordinary skill in the art would do." The Spink reference provides a motivation for including an aqueous mixture of a bisulfite and caustic to the concepts of the Rosenblatt reference and the Weaver-Meyers reference to HVAC systems such that it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute one known detoxification process as disclosed in the Rosenblatt reference for another (the Spink reference, col.20, lines 11-16) since such an aqueous mixture removes chlorine dioxide gas from emissions (col.19, lines 30-32).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

10. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. · Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R. CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 9:00-5:30.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, GLADYS J. CORCORAN can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Monzer R. Chorbaji MRC
Patent Examiner
AU 1744
04/20/2006

GLADYS J. CORCORAN
SUPERVISORY PATENT EXAMINER